

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 221 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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SHANKAR VISHNUBHAI SINDHI

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SATISH R PATEL for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive

detention dated 8th December, 1998, made by the Commissioner of Police, Vadodara City, under the powers conferred upon him under Sub-section 2 of Section 3 of the Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'dangerous person' within the meaning of Section 2 (c) of the Act and his activities are alleged to be prejudicial to the maintenance of public order. Four offences punishable under Chapter XVI of the Indian Penal Code have been registered against the petitioner during the year 1998. All of the said cases are pending trial before the concerned Courts. In three of the said cases, sword is alleged to have been used for commission of crime. Besides, three persons have given statements in respect of the petitioner's nefarious activities and its adverse effect on the 'public order'.

4. The only ground on which the impugned order of detention is challenged is that of the three statements of witnesses recorded by the Police Inspector, two have been verified personally by the detaining authority, while the one i.e., the statement of witness no. 2 has not been verified either by the detaining authority or by the police officer recording the same or by any other officer. However, the detaining authority has relied upon such unverified statement while recording his subjective satisfaction. The subjective satisfaction recorded by the detaining authority, therefore, is vitiated. In support of his contention, Mr. Patel has relied upon the judgment and order of this Bench in the matter of Khanusingh Dhulsing Rathod v. State of Gujarat [Special Civil Application No. 7655 of 1998 decided on 22nd July, 1999). In the said case, statement of one of the witnesses i.e. the witness no. 3 was not verified either by the detaining authority or by any of his subordinate officers. However, the said statement was relied upon by the detaining authority and the subjective satisfaction was based on the said statement. The subjective satisfaction, therefore, was held to be not supported by the evidence on record and was, therefore, held to be vitiated. In the present case, however, I find that besides the statement made by the witness no. 2, there are two other statements made by other witnesses and the subjective satisfaction is recorded on the basis of the investigation papers of the four criminal cases pending against the petitioner and the statements made by the witnesses. The subjective satisfaction is thus based on more than one ground. On similar facts, in the matter of Ganesh Durgaprasad v. Commissioner of Police [Special Civil Application No. 7501 of 1998, decided on 19th

July, 1999], I have taken a view that such statement is required to be ignored and considered to be non-est or not connected with the detenu. There being more than one ground of detention, in view of section 6 of the Act, reliance on such non-est ground would not invalidate or make the order of detention inoperative. In the present case also, as observed hereinabove, the detention has been ordered on more than one ground which are severable. In my opinion, in view of provision contained in Section 6 of the Act, the order of detention cannot be invalidated on account of one of the grounds being non-est. No other ground is urged before me.

4. The petition is, therefore, dismissed. Rule is discharged.

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Prakash\*